



महाराष्ट्र शासन राजपत्र

असाधारण भाग चार—क

वर्ष ४, अंक ४९]

सोमवार, ॲगस्ट २७, २०१८/भाद्र ५, शके १९४०

[पृष्ठे २, किंमत : रुपये ९.००

असाधारण क्रमांक ७४

प्राधिकृत प्रकाशन

महाराष्ट्र शासनाव्यतिरिक्त इतर वैधानिक प्राधिकाऱ्यांनी तयार केलेले

(भाग एक, एक-अ व एक-ल यांमध्ये प्रसिद्ध केलेले वैधानिक नियम व आदेश यांव्यतिरिक्त इतर)

वैधानिक नियम व आदेश ; यात भारत सरकार, उच्च न्यायालय, पोलीस आयुक्त, आयुक्त (राज्य उत्पादन शुल्क), जिल्हादंडाधिकारी व निवडणूक आयोग, निवडणूक न्यायाधिकरण, निवडणूक निर्णय अधिकारी व निवडणूक आयोगाखालील इतर प्राधिकारी यांनी तयार केलेले वैधानिक नियम व आदेश यांचा समावेश होतो.

BEFORE THE GOVERNOR OF MAHARASHTRA

Re.—Petition under Articles 191 and 192 of the Constitution of India by Shri Harishchandra Pawar regarding alleged disqualification of Shri. M. G. Bhangadia, Member of the Maharashtra Legislative Council.

Order

Shri Harishchandra Pawar has filed petition dated 1st February 2014 alleging that Shri M. G. Bhangadia, Member of the Maharashtra Legislative Council (MLC), has incurred disqualification under Articles 191 and 192 of the Constitution of India.

In the Petition, the petitioner averred that the payment of running bills by Irrigation Department after election of Shri M. G. Bhangadia as MLC, are found and the copies of the same were enclosed with the Petition. The Petitioner has, therefore, requested that the Government Contractor and elected MLC, Shri M. G. Bhangadia may be disqualified from the membership of the Maharashtra Legislative Council under articles 191 and 192 of the Constitution of India.

2. As required by the provisions of clause (2) of article 192 of the constitution, the question of the alleged disqualification was referred to the Election Commission of India for its opinion.

In view of the averments in the petition in respect of a copy of Running Account Bill (Voucher No. 5, dated 25th June 2012) issued by the Water Resources Department, Government of Maharashtra for M/s. M. G. Bhangdiya and Hitbhav Engr. (JV), Nagpur, for the Agreement No. B-1/18/LLP/2006-07 annexed to the Petition, the Election Commission of India *vide* Letter No. 113/3/(G)/MT/ECI/LET/FUNC/JUD/RCC/2014/242, dated 23rd March 2017 inquired from the Chief Engineer, Water Resources Department, Government of Maharashtra as to when the final bill for the work done was raised and when the completion certificate was issued in relation to the Agreement No. B-1/18/LLP/2006-2007. The Commission also made the same inquiry from the Principal Secretary, Water Resource Department, Government of Maharashtra, as well as the Chief Electoral Officer of Maharashtra.

3. In response to the inquiry made by the Commission, Water Resource Department, Government of Maharashtra has informed the Commission *vide* Letter No. Sankirn 2017/C.R. 196/MP-2, dated 7th May 2018 that although the work under the Agreement No. B-1/18/LLP/2006-2007 was completed on 25th June 2012, since the final bill preparation is pending for want of some record to be received from the contractor, the final completion certificate and bill copies could not be provided.

4. The Commission has stated in its opinion that in the hearing held before the Commission on 18th June 2018, the Chief Engineer, Water Resources Department, Amravati. Shri Ravindra P. Landekar and Superintending Engineer, Irrigation Circle Yevatmal. Shri R. A. Katpalliwar, stated that the Agreement No. B-1/18/LLP/2006-7 was entered into between the Joint Venture of M/s. M. G. Bhangadiya and Hitbhav Engr., Nagpur and the Vidarbha Irrigation Development Corporation (hereinafter referred to as " VIDC ").

The said officers also informed the Commission that the officers in VIDC are on deputation from Government of Maharashtra which is the cadre controlling authority with respect to VIDC officers and all appointments in VIDC are made by Government of Maharashtra. They further informed that VIDC receives budgetary grant from Government of Maharashtra and is accountable to Maharashtra Legislative Assembly and Officers of VIDC appear before concerned Committees of Maharashtra Legislative Assembly during the hearings pertaining to functioning of VIDC. The Chief Engineer, Water Resources Department, Amravati, Shri Ravindra P. Landekar also informed the Commission that VIDC has been incorporated under the Vidarbha Irrigation Development Corporation Act, 1997 (hereinafter referred to as " VIDC Act ") and is a wholly owned undertaking of Government of Maharashtra.

5. The commission has further stated that it was brought to be attention of the Commission that the Hon'ble Supreme Court of India Has held in **Shrikant V. Vasantrao and Ors.** [(2006) 2 SCC 682] that the term ' State Government ' is different from ' local or other authorities under the control of the State Government ' for the purposes of disqualification and that the Godawari Marathwada Irrigation Development Corporation constituted under the Maharashtra Godawari Marathwada Irrigation Development Corporation Act, 1998 is not ' State Government ' and therefore any contracts with it are not contracts entered into by the candidate with the appropriate Government. A Judgment dated 2nd September 2016 passed by Nagpur Bench of the Hon'ble High Court of Judicature at Bombay in Election Petition No. 8 of 2018 (**Gajanan V. Kirtikumar Mitesh Bhangdiya and Ors.**) was also brought to the notice of the Commission wherein the Hon'ble High Court has relied on the findings of the Hon'ble Supreme Court in **Shrikant V. Vasantrao and Ors.** (supra) to hold that VIDC is not the " appropriate Government " for the purposes of attracting disqualification under section 9A of the Representation of the People Act, 1951.

6. The Commission has concluded that, it is abundantly clear that VIDC is an instrumentality of State which has been created for the purpose of implementation of projects for which it receives budgetary grants from Government of Maharashtra so much so that the concerned Cabinet Minister is the *ex-officio* chairman of VIDC and there is all pervasive control of the Government on VIDC and therefore a person having subsisting contract with such a corporation is in essence having a contractual relationship with the Government.

However, in view of the above noted findings of the Hon'ble Supreme Court in **Shrikant V. Vasantrao and Ors.** (supra) and the Hon'ble Bombay High Court in **Gajanan V. Kirtikumar, Mitesh Bhangdiya and Ors.** (supra) the Commission has opined that Shri Mitesh Gotulal Bhangdia is not disqualified under section 9A of the Representation of the People Act, 1951.

In accordance with the said opinion of the Election Commission of India, I pass the following order :

Order

The petition of Shri Harishchandra Pawar is hereby, for the reasons stated above, dismissed.

Ch. VIDYASAGAR RAO,

Governor of Maharashtra.

Dated the 16th August 2018.

क्रमांक : डिआयएस २०१८/प्र. क्र. ९५/१८/३३,
सामान्य प्रशासन विभाग
मादाम कामा मार्ग, हुतात्मा राजगुरु चौक,
मंत्रालय विस्तार, मुंबई ४०० ०३२.
दिनांक २७ ऑगस्ट २०१८.

प्रत, माहिती व योग्य कार्यवाहीसाठी अग्रेषित :—

- (१) प्रधान सचिव, महाराष्ट्र विधानमंडळ सचिवालय, विधानभवन, मुंबई,
- (२) जिल्हाधिकारी तथा जिल्हा निवडणूक अधिकारी, नागपूर,
- (३) जिल्हाधिकारी तथा जिल्हा निवडणूक अधिकारी, वाशिम,
- (४) निवडनस्ती.

शुभा बोरकर,
अवर सचिव व उप मुख्य निवडणूक अधिकारी,
महाराष्ट्र राज्य.